

HOUSE BILL NO. 295

INTRODUCED BY L. JENT

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS GOVERNING DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; CLARIFYING THE DEFINITION OF "VEHICLE"; MODIFYING THE DEFINITION OF "UNDER THE INFLUENCE"; EXTENDING THE PERIOD FOR WHICH A SENTENCE MAY BE SUSPENDED PENDING CHEMICAL DEPENDENCY TREATMENT; ALLOWING A SENTENCING JUDGE TO RETAIN JURISDICTION OVER A PERSON ORDERED TO COMPLETE CHEMICAL DEPENDENCY TREATMENT FOR 1 YEAR; AND AMENDING SECTIONS 45-5-205, 61-1-103, 61-5-205, 61-8-401, 61-8-714, AND 61-8-732, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-5-205, MCA, is amended to read:

"45-5-205. Negligent vehicular assault -- penalty. (1) A person who negligently operates a ~~motor~~ vehicle, other than a bicycle as defined in 61-1-123, while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided for in 61-8-401(1), and who causes bodily injury to another commits the offense of negligent vehicular assault.

(2) Subject to subsection (3), a person convicted of the offense of negligent vehicular assault shall be fined an amount not to exceed \$1,000 or shall be imprisoned in the county jail for a term not to exceed 1 year, or both, and shall be ordered to pay restitution as provided in 46-18-241.

(3) (a) A person convicted of the offense of negligent vehicular assault who caused serious bodily injury to another shall be fined an amount not to exceed \$10,000 or shall be incarcerated for a term not to exceed 5 years, or both, and shall be ordered to pay restitution as provided in 46-18-241.

(b) If a term of incarceration is imposed, the judge may suspend the term of incarceration upon the condition of payment of any fine imposed and of restitution. If the person does not pay the fine or restitution, the term of incarceration may be imposed."

SECTION 2. SECTION 61-1-103, MCA, IS AMENDED TO READ:

"61-1-103. Vehicle. (1) ~~"Vehicle"~~ Except as provided in subsection (2), "vehicle" means every

device in, upon, or by which any person or property may be transported or drawn upon a public highway, except devices moved by animal power or used exclusively upon stationary rails or tracks.

(2) (a) However, in In chapters 3 and 4, the term vehicle means "motor vehicle" as defined in this part, and in.

(b) (i) In chapter 8, part 4, this term vehicle does not include a bicycle as defined in 61-1-123.

(ii) In chapter 8, part 4, except 61-8-440 through 61-8-442, vehicle includes a snowmobile."

Section 3. Section 61-5-205, MCA, is amended to read:

"61-5-205. Mandatory revocation of license upon proper authority. The department upon proper authority shall revoke the driver's license or the operating privilege of any driver upon receiving a record of the driver's conviction or forfeiture of bail not vacated of any of the following offenses, when the conviction or forfeiture has become final:

(1) negligent homicide resulting from the operation of a motor vehicle;

(2) driving a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs, except as provided in 61-5-208, or operation of a motor vehicle by a person with a blood alcohol concentration of 0.10 or more;

(3) any felony in the commission of which a motor vehicle is used;

(4) failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;

(5) perjury or the making of a false affidavit or statement under oath to the department under this chapter or under any other law relating to the ownership or operation of motor vehicles;

(6) conviction or forfeiture of bail not vacated upon three charges of reckless driving committed within a period of 12 months; or

(7) negligent vehicular assault as defined in 45-5-205 involving a motor vehicle."

Section 4. Section 61-8-401, MCA, is amended to read:

"61-8-401. Driving under influence of alcohol or drugs. (1) It is unlawful and punishable, as provided in 61-8-442, 61-8-714, and 61-8-731 through 61-8-734, for a person who is under the influence of:

(a) alcohol to drive or be in actual physical control of a vehicle upon the ways of this state open

1 to the public;

2 (b) a dangerous drug to drive or be in actual physical control of a vehicle within this state;

3 (c) any other drug to drive or be in actual physical control of a vehicle within this state; or

4 (d) alcohol and any dangerous or other drug to drive or be in actual physical control of a vehicle
5 within this state.

6 (2) The fact that any person charged with a violation of subsection (1) is or has been entitled to
7 use alcohol or a drug under the laws of this state does not constitute a defense against any charge of
8 violating subsection (1).

9 (3) "Under the influence" means that as a result of taking into the body alcohol, drugs, or any
10 combination of alcohol and drugs, a person's ability to safely operate a ~~motor~~ vehicle has been diminished.

11 (4) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have
12 been committed by any person driving or in actual physical control of a vehicle while under the influence
13 of alcohol, the concentration of alcohol in the person at the time of a test, as shown by analysis of a
14 sample of the person's blood or breath drawn or taken within a reasonable time after the alleged act, gives
15 rise to the following inferences:

16 (a) If there was at that time an alcohol concentration of 0.04 or less, it may be inferred that the
17 person was not under the influence of alcohol.

18 (b) If there was at that time an alcohol concentration in excess of 0.04 but less than 0.10, that
19 fact may not give rise to any inference that the person was or was not under the influence of alcohol, but
20 the fact may be considered with other competent evidence in determining the guilt or innocence of the
21 person.

22 (c) If there was at that time an alcohol concentration of 0.10 or more, it may be inferred that the
23 person was under the influence of alcohol. The inference is rebuttable.

24 (5) The provisions of subsection (4) do not limit the introduction of any other competent evidence
25 bearing upon the issue of whether the person was under the influence of alcohol, drugs, or a combination
26 of alcohol and drugs.

27 (6) Each municipality in this state is given authority to enact 61-8-406, 61-8-408, 61-8-410,
28 61-8-714, 61-8-722, 61-8-731 through 61-8-734, and subsections (1) through (5) of this section, with
29 the word "state" in 61-8-406 and subsection (1) of this section changed to read "municipality", as an
30 ordinance and is given jurisdiction of the enforcement of the ordinance and of the imposition of the fines

1 and penalties provided in the ordinance.

2 (7) Absolute liability as provided in 45-2-104 will be imposed for a violation of this section."

3

4 **Section 5.** Section 61-8-714, MCA, is amended to read:

5 **"61-8-714. Penalty for driving under influence of alcohol or drugs -- first through third offense.**

6 (1) A person convicted of a violation of 61-8-401 shall be punished by imprisonment for not less than 24
7 consecutive hours or more than 6 months and shall be punished by a fine of not less than \$100 or more
8 than \$500. The initial 24 hours of the imprisonment term must be served in the county jail and may not
9 be served under home arrest. The mandatory imprisonment sentence may not be suspended unless the
10 judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical
11 or mental well-being. Except for the initial 24 hours of the imprisonment term, notwithstanding
12 46-18-201(2), the imprisonment sentence may be suspended for a period of up to ~~6 months~~ 1 year
13 pending successful completion of court-ordered chemical dependency assessment, education, or treatment
14 by the defendant.

15 (2) On a second conviction, the person shall be punished by a fine of not less than \$300 or more
16 than \$500 and by imprisonment for not less than 7 days or more than 6 months. At least 48 hours of the
17 imprisonment term must be served consecutively in the county jail and may not be served under home
18 arrest. Three days of the imprisonment sentence may not be suspended unless the judge finds that the
19 imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.
20 Except for the initial 3 days of the imprisonment term, notwithstanding 46-18-201(2), the imprisonment
21 sentence may be suspended for a period of up to ~~6 months~~ 1 year pending successful completion of a
22 chemical dependency treatment program by the defendant.

23 (3) On the third conviction, the person shall be punished by imprisonment for a term of not less
24 than 30 days or more than 1 year and by a fine of not less than \$500 or more than \$1,000. At least 48
25 hours of the imprisonment term must be served consecutively in the county jail and may not be served
26 under home arrest. The imposition or execution of the first 10 days of the imprisonment sentence may not
27 be suspended. The remainder of the imprisonment sentence may be suspended for a period of up to 1 year
28 pending successful completion of a chemical dependency treatment program by the defendant."

29

30 **Section 6.** Section 61-8-732, MCA, is amended to read:

1 **"61-8-732. Driving under influence of alcohol or drugs -- driving with excessive alcohol**
2 **concentration -- assessment, education, and treatment required.** (1) In addition to the punishments
3 provided in 61-8-714, 61-8-722, and 61-8-731, regardless of disposition, a defendant convicted of a
4 violation of 61-8-401 or 61-8-406 shall complete:

5 (a) a chemical dependency assessment;

6 (b) a chemical dependency education course; and

7 (c) on a second or subsequent conviction for a violation of 61-8-401 or 61-8-406 or as required
8 by subsection (8) of this section, chemical dependency treatment.

9 (2) The sentencing judge may, in the judge's discretion, require the defendant to complete the
10 chemical dependency assessment prior to sentencing the defendant. If the assessment is not ordered or
11 completed before sentencing, the judge shall order the chemical dependency assessment as part of the
12 sentence.

13 (3) The chemical dependency assessment and the chemical dependency education course must
14 be completed at a treatment program approved by the department of public health and human services
15 and must be conducted by a certified chemical dependency counselor. The defendant may attend a
16 treatment program of the defendant's choice as long as the treatment services are provided by a certified
17 chemical dependency counselor. The defendant shall pay the cost of the assessment, the education
18 course, and chemical dependency treatment.

19 (4) The assessment must describe the defendant's level of addiction, if any, and contain a
20 recommendation as to education, treatment, or both. A defendant who disagrees with the initial
21 assessment may, at the defendant's cost, obtain a second assessment provided by a certified chemical
22 dependency counselor or a program approved by the department of public health and human services.

23 (5) The treatment provided to the defendant at a treatment program must be at a level appropriate
24 to the defendant's alcohol or drug problem, or both, as determined by a certified chemical dependency
25 counselor pursuant to diagnosis and patient placement rules adopted by the department of public health
26 and human services. Upon determination, the court shall order the defendant's appropriate level of
27 treatment. If more than one counselor makes a determination as provided in this subsection, the court shall
28 order an appropriate level of treatment based upon the determination of one of the counselors.

29 (6) Each counselor providing education or treatment shall, at the commencement of the education
30 or treatment, notify the court that the defendant has been enrolled in a chemical dependency education

1 course or treatment program. If the defendant fails to attend the education course or treatment program,
2 the counselor shall notify the court of the failure.

3 (7) A court or counselor may not require attendance at a self-help program other than at an "open
4 meeting", as that term is defined by the self-help program. A defendant may voluntarily participate in
5 self-help programs.

6 (8) Chemical dependency treatment must be ordered for a first-time offender convicted of a
7 violation of 61-8-401 or 61-8-406 upon a finding of chemical dependency made by a certified chemical
8 dependency counselor pursuant to diagnosis and patient placement rules adopted by the department of
9 public health and human services.

10 (9) (a) On a second or subsequent conviction, the treatment program provided for in subsection
11 (5) must be followed by monthly monitoring for a period of at least 1 year from the date of admission to
12 the program.

13 (b) If a defendant fails to comply with the monitoring program imposed under subsection (9)(a),
14 the court shall revoke the suspended sentence, if any, impose any remaining portion of the suspended
15 sentence, and may include additional monthly monitoring for up to an additional ~~6 months~~ 1 year.

16 (10) Notwithstanding 46-18-201(2), whenever a judge suspends a sentence imposed under
17 61-8-714 and orders the person to complete chemical dependency treatment under this section, the judge
18 retains jurisdiction to impose any suspended sentence for up to 1 year."

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